

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADVANCED MULTILEVEL CONCEPTS,)	Case Nos. 11-6679-SC
INC. and ABLE DIRECT MARKETING,)	
)	ORDER DENYING PLAINTIFFS'
Plaintiffs,)	<u>MOTION FOR ATTORNEY FEES</u>
)	
v.)	
)	
STALT, INC., and DOES 1 through)	
30, inclusive,)	
)	
Defendants.)	
)	
)	

Plaintiffs Advanced Multilevel Concepts and Able Direct Marketing (collectively, "Plaintiffs") bring this case in connection with allegedly unlawful stop orders imposed on their shares of VitaminSpice. Plaintiffs have sued Stalt, Inc., the transfer agent that allegedly imposed the stop orders; Hillard M. Sterling ("Sterling"), the attorney who allegedly counseled VitaminSpice to issue the stop orders; and Freeborn & Peters LLP ("Freeborn & Peters"), Sterling's former law firm. On May 21, 2012, the Court granted Sterling and Freeborn & Peters' (collectively, the "Freeborn Defendants") motion to dismiss for lack of personal jurisdiction, but denied their motion for Rule 11 sanctions. ECF No. 57.

Plaintiffs now move the Court to award them the attorney fees

1 they incurred in defending against the Freeborn Defendants' Rule 11
2 motion. ECF No. 61 ("Mot."). Specifically, Plaintiffs seek
3 \$12,750. Plaintiffs' Motion is fully briefed. ECF Nos. 64
4 ("Opp'n"), 68 ("Reply"). Pursuant to Civil Local Rule 7-1(b), the
5 Court finds this matter appropriate for determination without oral
6 argument.

7 Plaintiffs' motion is brought pursuant to Rule 11's fee-
8 shifting provision. The fee-shifting provision is not automatic.
9 A prevailing party on a Rule 11 motion is only entitled to recover
10 reasonable fees and costs where the court finds that such an award
11 is "warranted." Fed. R. Civ. P. 11(c)(2). At least one court has
12 held that the prevailing party need not show that a Rule 11 motion
13 is frivolous in order to recover. See EEOC v. Tandem Computers,
14 158 F.R.D. 224, 229 (D. Mass. 1994) ("This sanction is available
15 whether or not the motion itself violated Rule 11."). However, the
16 authority cited by Plaintiffs indicates that something more than an
17 unavailing Rule 11 motion is required to justify the award of fees.
18 See Netbula, LLC v. Bindview Dev. Corp., 2007 U.S. Dist. LEXIS
19 44460, 9-10 (N.D. Cal. June 11, 2007) ("Netbula's Rule 11 request
20 clearly was not compliant with the Rule"); Robinson v. City of San
21 Bernadino, 992 F. Supp. 1198, 1208 (C.D. Cal. 1998) (characterizing
22 the Rule 11 motion at issue as "frivolous"); EEOC, 158 F.R.D. at
23 229-30 ("Tandem's persistence in rehashing the same arguments time
24 and again without success can be viewed as nothing but harassment
25 at this juncture.").

26 The Court concludes that an award of attorney fees is not
27 warranted here. Plaintiffs have not articulated a compelling
28 reason for such an award. Rather, Plaintiffs merely argue that

1 they should be compensated for defending against the Freeborn
2 Defendants' "meritless" Rule 11 motion. Mot. at 4. Something more
3 is required. Plaintiffs may not recover the fees they incurred in
4 defending against the Rule 11 motion merely because that motion was
5 denied. Plaintiffs also argue that the Freeborn Defendants' Rule
6 11 motion "needlessly increase[d] the cost of litigation." Id.
7 But Plaintiffs' motion could be characterized in the same way.¹

8 For the reasons set forth herein, Plaintiffs' motion for fees
9 is DENIED.

10
11 IT IS SO ORDERED.

12
13 Dated: August 7, 2012

14 
UNITED STATES DISTRICT JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28

¹ The Freeborn Defendants should not take this as invitation to move for an award of the attorney fees incurred in defending against the instant motion.